



POLICE DEPARTMENT

April 23, 2021

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Stella Ibanez :

Tax Registry No. 931943 :

10th Precinct :

Case No.

2018-19778

-----X
At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Josh Kleiman
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: David Green, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Stella Ibanez, while assigned to the 10th Precinct, on or about June 12, 2018, at about 1600 hours, while on-duty and having responded to a reported physical altercation between domestic partners, identities known to the Department, wrongfully failed to conduct an investigation, including collecting and securing evidence, and recording witness statements, conferring with the 10th Precinct Patrol Supervisor, and preparing a Complaint Report, as required.

P.G. 207-07, Pages 1 & 2,
Paragraphs 1, 4, 5, 6 & 7

PRELIMINARY INVESTIGATION
OF COMPLAINTS (OTHER THAN
VICE RELATED OR NARCOTICS
COMPLAINTS)
COMPLAINTS
FAMILY OFFENSES/ DOMESTIC
VIOLENCE ARRESTS
COMPLAINT REPORTING
SYSTEM
COMPLAINTS

P.G. 208-26,¹ Pages 4, 8 & 17,
Paragraphs 2, 11 & 16

P.G. 207-01, Page 3, Paragraph 1

2. Said Police Officer Stella Ibanez, while assigned to the 10th Precinct, on or about June 12, 2018, at about 1600 hours, while on-duty and having responded to a reported physical altercation between domestic partners, identities known to the Department, wrongfully failed to arrest an identified offender at the scene of said incident.

P.G. 208-01, Page 1, Paragraph 3

LAW OF ARREST
ARRESTS

P.G. 208-26,² Pages 6, 7, 8 & 9,
Paragraphs 7, 8 & 12

FAMILY OFFENSES/DOMESTIC
VIOLENCE
ARRESTS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me remotely on March 16, 2021. Respondent, through her counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having carefully reviewed all of the evidence in this matter, I recommend that Respondent forfeit thirty (30) vacation days.

¹ This citation in Specification 1 contains a typo and should read P.G. 208-36.

² This citation in Specification 2 contains a typo and should read P.G. 208-36.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent testified that on June 12, 2018, as a senior police officer serving as a Field Training Officer, she responded as a backup unit to the scene of a reported domestic incident. Upon arriving with her trainee, Police Officer Hess, she met with the assigned unit, Police Officer Williamson and Police Officer Collins, and all of them approached the apartment door of a married couple, LM and DM. LM answered the door and spoke with Police Officers Williams and Collins. Respondent continued into the apartment and spoke with DM. (Tr. 22-24, 63-64)

DM related to her that he was involved in a verbal dispute with his husband who had discovered that he was cheating on him. DM locked himself in the bedroom, but LM used a screwdriver to forcibly enter the bedroom. DM was able to physically remove LM from the bedroom, relock the door, and contact 911. At the scene, LM made clear that he did not want DM arrested, but only removed from the scene. At some point, DM stated that he wanted to kill himself. This caused the assigned unit to call for an ambulance to take DM to the hospital. (Tr. 23-27; Dept. Ex. 8 at 7-9, 13-14; Dept. Ex. 10 at 8)

Once DM was removed to another room, LM, who was crying, alerted Respondent that he had photos and a video he wanted to show her.³ Respondent stopped him, reminding him that he had stated that he had said he only wanted DM removed. Respondent then asked, "Do you want him arrested?" She further told him that if he did want DM arrested then he would have to speak with "the other officer who was handling this case." LM restated that he did not want DM arrested. He then asked whether he should delete the video. Respondent replied, "I don't care

³ At Respondent's prior Department interview, she stated that LM told her that he wanted to show her "pictures" and "a video" (Dept. Ex. 8 at 13-14). At trial, however, Respondent claimed that she did not know at the time what LM wanted to show her (Tr. 28-29, 51, 55, 65-66).

what you do with it. You can get rid of it," and walked away. (Tr. 28-29, 52, 63; Dept. Ex. 8 at 13-14)

Respondent claimed that she did not view any pictures or video before leaving the scene. Respondent admitted, however, that she should have asked to see the material as it was germane to the assignment and that she failed to alert the assigned sector to the existence of the additional material. She took no notes of her interactions with LM and made no reports. She further admitted that she should have notified the patrol supervisor of the incident and effected an arrest due the physical nature of the dispute. (Tr. 28-29, 53-55, 58, 61-63, 65-66; Dept. Ex. 8 at 13-14, 19, 28, 33; Dept. Ex. 10 at 7-8, 11-12, 26)

Police Officer Collins prepared a Domestic Incident Report noting a verbal dispute with no injuries claimed or observed at the scene (Dept. Ex. 1).

Later that night, she received a text message from LM, causing her to engage in the following communications via text message with LM:

June 12, 2018, at 10:16 PM:

LM: Officer Ibanez, This is LM from the assault at 282 11th ave. You saw the video of my husband choking me. I want to press charges against DM. I am afraid for my life. Can we speak tomorrow?

Respondent: Yes, is he back?

LM: No I do not know where he is and I am afraid that they will let him out and he will come for revenge. I am afraid for my life and my dog's life.
I think he is still with the EMS

Respondent: No he's not with EMS. He's at the hospital talking to a dr. He was very remorseful and did not appear at all like he was angry and wanting revenge.
But of course a report can be made tmw.
And domestic violence officers will make the arrest if he's not there. They will also make random visits.
Do you still have the video on your iCloud??

LM: No I deleted it in front of you as you asked
I have some pictures but not of him dragging me out
Pics of him choking me
I am going to a hospital as my throat hurts a lot at least I am going
to have this report

Respondent: So why the change of heart
I told you but you insisted you pleaded with us not to arrest him
You know I was more than willing

LM: I was trying to protect him but I realized that I am putting my life
at risk
And that is not worth it

Respondent: Well he's not coming out tonight
You can go to the hospital and cops will be called there and take a
report
Just be truthful that you didn't want to have your husband arrested
so you said and wrote it was a dispute
Just tell the cops that arrive that he choked you and you have pics
If you want to wait I'll come over tmw in the afternoon and take
the report??

LM: Sure I can wait. Thank you for all the help!

Respondent: Ok I'll see you tomorrow I'm at work from 330 to 1135pm
Let me know what time is good

LM: I will put some ice on my throat and hold it back. Yes anytime
tomorrow thank you
How about 4 pm?

Respondent: If your throat still hurts I'll call you

LM: It does hurt a bit

Respondent: You can go to the hospital or get checked by ems

LM: What should I say at hospital? That he choked me?
You know what. I will wait for tomorrow.
I'd rather have you take the report

Respondent: Ok see you tmw

LM: Thank you have a great night!

Respondent: You too! Feel better!

June 13, 2018, at 3:10 PM:

Respondent: Hi how are you? Would you like to meet?

LM: Yes. I would.

Respondent: Did your spouse come by?
Ok so around 4pm?

LM: No actually we cannot find where he is
Yes
That would be great

Respondent: K he could still be at the hospital

LM: We cannot locate the hospital. His family contacted the Danish
embassy and they were not able to find him either

Respondent: I'll ask the other cop what hospital

LM: Ok thanks

Respondent: He went to NYU Cornell

LM: Thank you

June 13, 2018, at 4:51 PM:

Respondent: Did I leave a pink iPhone there?

LM: -yes
[provides email address]
Thank you!

(Dept. Ex. 3; Tr. 35-36)

At trial, Respondent disputed that she had seen the video or told LM to delete the video. She further explained that, at the scene, she did not know what LM wanted to show her or what it was pertaining to; she thought it might pertain to the cheating rather than any physical altercation. In any case, she stated that she did not want to challenge LM's statements via text message, so she let his untrue statements go unanswered. (Tr. 28-29, 36-37, 51, 55, 65-66; Dept. Ex. 8 at 23-25; Dept. Ex. 10 at 12-14, 20-21)

After returning to the scene and meeting with LM, she watched a video LM had in his possession depicting a physical altercation (Dept. Ex. 10 at 23-24). At approximately 5:55 PM on June 13, 2018, Respondent prepared a Domestic Incident Report (Dept. Ex. 2), wherein she detailed a verbal dispute and physical altercation involving DM choking LM until he was rendered unconscious. The DIR further stated that, while LM initially had not wanted his husband arrested, he had a "change of heart" and wanted to be honest about the incident since he feared for his life due to his husband's depression and anger issues. At the same time, a complaint report was also generated, and Respondent referred the matter to a "squad" to arrest DM. (Tr. 38-40; Dept. Ex. 4; Dept. Ex. 10 at 24)

Respondent and LM then engaged in the following communications via text messages:

June 13, 2018, at 8:34 PM:

LM: Hi officer Ibanez, how do I know if DM has been arrested?

Respondent: -you will be contacted right away

LM: Ok great thanks!

June 13, 2018, at 10:25 PM:

LM: It seems that DM was discharged today
Can you guys trace his cell phone?

June 14, 2018, at 12:23 PM:

LM: DM is here
He is in the leasing office
Of the building

Respondent: He did he call 911

LM: Not that I know

Respondent: Cuz he can't come into the apt without them
Ok if he tries then you call

LM: He has a company phone in his possession

I was going to file a report

Respondent: Explain there was a domestic situation

LM: Does he have an arrest order?

Respondent: Well ask the office if he's willing to surrender the phone
Let me call the domestic officers at the 10th

LM: Some officers showed up here

Respondent: K good

LM: Aren't they going to arrest him?

Respondent: Did you get a complaint report number
I'm in at 3pm if they don't and he's still around I will.

LM: Yes I gave it to them
He has been arrested. Thank you!

(Dept. Ex. 3)

DM was arrested on June 14, 2018, at approximately 3:15 PM (Dept. Ex. 5). A Criminal Court Complaint, sworn on June 14, 2018, at approximately 6:07 PM, charged DM with Strangulation in the Second Degree (Dept. Ex. 6).

At her official Department interview on November 9, 2018, Respondent explained:

Well, my motivation was only to help. It wasn't not to not arrest this guy. I don't care about arresting anyone. I'd rather arrest, then handle a million jobs on, on, on the radio cue, arrest is a lot easier. But it wasn't about that. It was -- you know, it was taking him into account. And, of course, maybe I shouldn't have. I got, maybe, hooked into his emotional state. I felt bad for him. That's why I gave him the phone. That's why I gave him my number, said he could call me 'cause I didn't think he was right frame of mind. And, you know, he -- his partner cheated on him, so I felt bad. That was, basically -- I was just feeling for him and wanted to help him out.

(Dept. Ex. 10 at 18-19)

PENALTY

In order to determine an appropriate penalty, the Tribunal, guided by the Department Disciplinary System Penalty Guidelines ("Disciplinary Guidelines"), considered all relevant facts and circumstances, including any aggravating and mitigating factors established in the record. Respondent's employment record was also examined (*see* 38 RCNY § 15-07). Information from Respondent's personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

The two charges against Respondent are part and parcel of the same misconduct: Respondent's failure to take appropriate police action upon responding to the scene of a domestic incident. The Department is seeking a penalty of the forfeiture of thirty (30) vacation days; while Respondent suggested that a forfeiture of fifteen (15) to twenty (20) vacation days is more appropriate. The Disciplinary Guidelines establish a presumptive penalty of twenty (20) penalty days for a failure to take appropriate police action, with a mitigated penalty range of 10-20 penalty days and an aggravated penalty range of 20-30 penalty days.⁴ I concur with the Department's recommendation that an aggravated penalty is warranted.

Patrol Guide procedure 208-36, in accordance with Criminal Procedure Law § 140.10, requires officers responding to the scene of a domestic incident to make an arrest where there is

⁴ This penalty range is consistent with Department precedent (*see, e.g., Disciplinary Case Nos. 2018-19542 & 19543* [December 13, 2019] [Four-year police officer and five-year police officer, each with no disciplinary record, negotiated penalties of ten (10) vacation days for (i) leaving and failing to return to a job prior to its completion, (ii) failing to arrest a suspect and (iii) failing to prepare a Complaint Report Worksheet when responding to a radio transmission of a family dispute.]; *Disciplinary Case No. 2014-12782* [April 15, 2016] [Ten-year police officer with no prior disciplinary history negotiated a penalty of fifteen (15) vacation days for failing to take police action and properly investigate the circumstances surrounding the stabbing of an individual, in that he failed to interview witnesses, retrieve and voucher evidence, and prepare a complaint report, instead preparing an inaccurate Domestic Incident Report.]; *Disciplinary Case No. 2013-10128* [February 4, 2015] [Nine-year police officer with one prior adjudication forfeited thirty (30) vacation days and was placed on one-year dismissal probation after a mitigation hearing for failing to take appropriate action upon responding to a bank where a possible explosive device had been left. Instead of securing the scene and invoicing the evidence, Respondent allowed the evidence to be discarded. He neither prepared a complaint report nor made the necessary notifications.].

probable cause to believe that a felony has been committed. Where there is only evidence of a misdemeanor and the victim requests that the offender not be arrested, the same provisions permit officers to exercise some discretion as to whether to arrest the offender. In the misdemeanor scenario, the Patrol Guide assists officers in exercising their discretion with a multi-factor approach focusing on the safety of household members.⁵ Importantly, however, Criminal Procedure Law § 140.10(4)(c) commands: "The officer shall neither inquire as to whether the victim seeks an arrest of such person nor threaten the arrest of any person for the purpose of discouraging requests for police intervention" (*see also* P.G. 208-36, Page 8, Para. 8(a)). The exercise or non-exercise of the arrest power, however, must be prefaced by a thorough field investigation (P.G. 207-07, Page 1, Para. 4). Indeed, absent such an investigation, the officer is not in a position to make an informed decision, discretionary or otherwise.

Here, Respondent did not fail to take *any* police action; rather the actions she took were either inadequate or inappropriate. She interviewed LM, provided LM with her Department cellphone number, and followed up with LM when he communicated with her. Yet, Respondent failed to document these interactions and failed to report them to the Department, her fellow officers assigned to the incident, or her superiors. While LM made certain at the outset that he did not want DM arrested, once DM was not in his presence LM's certainty quickly faded. He attempted to seek input from Respondent and show her evidence of a crime, but she interrupted him and reminded him of his original request that DM not be arrested. By inserting herself into LM's mental calculations, Respondent engaged in the very type of victim manipulation that the Patrol Guide and New York Criminal Procedure Law caution against.

⁵See P.G. 208-36, Page 8, Note [establishing a multi-factor analysis and stating that "[t]he primary considerations when the complainant/victim does not want an arrest are the prevention of further violence and the safety of ALL household members."].

Most concerning, Respondent announced her indifference to the destruction of evidence ("I don't care You can get ride of it."). While Respondent's intention in the moment may have been to avoid DM's arrest at LM's request, Respondent was experienced enough to know that the destruction of evidence could harm LM's legal standing in the event that he changed his mind or in the event that he was the victim of further domestic violence at the hands of DM.

At her mitigation hearing, Respondent sought to downplay the charged misconduct by testifying that: (1) upon her initial visit to the scene, she was unaware that LM had been choked; (2) she was not responsible for taking certain investigative steps because she was only assigned as a backup unit; and (3) she was unaware that LM was attempting to show her evidence of a crime, assuming instead that he may have been trying to show her evidence of an affair (Tr. 28-30, 47, 52, 54-55). The record evidence does not support Respondent's mitigation arguments. Upon being informed by LM via text message that LM had been choked, mere hours after her initial response to the scene, Respondent expressed no surprise and took no immediate police action. She further did not express any disagreement or surprise in the text messages upon being informed by LM that he had deleted the video "of my husband choking me" "as you asked"⁶ (Dept. Ex. 3). Upon being informed by LM that he continued to possess photographs of the physical altercation, including "[p]ics of him choking me," Respondent neither informed him to preserve them for vouchering or sought to have him send them to her (*Id.*). Instead, Respondent attempted to convince LM that he should not worry because DM "did not appear at all like he was angry or wanting of revenge" and, in any case, DM is "at the hospital" and "he's not coming out tonight," despite the fact that DM was not arrested and was under no obligation to stay at the hospital (Dept. Ex. 3; Tr. 72). Respondent's explanation at trial that she did not want to disagree

⁶ It is unclear in the record whether the video was erased. Respondent claimed that she viewed a video LM showed her the next day, but it is unclear whether this is the same video that LM claimed, in the text messages, he had erased at Respondent's direction.

with LM via text message (Tr. 36-37) does not adequately explain her behavior and her failure to act. Rather, Respondent's failure to take immediate police action upon being informed of the alleged commission of a felony and the existence of documentary evidence corroborates and compounds her derelictions of duty at the scene. Accordingly, I am unpersuaded by Respondent's mitigation evidence.

I am persuaded, however, that Respondent's prior disciplinary history warrants the application of an aggravated penalty. On November 8, 2011, Respondent forfeited thirty-one (31) pre-trial suspension days and was placed on one-year dismissal probation in connection with three disciplinary charges: (1) participating in a meeting with a group of officers wherein it was proposed that the officers deny knowledge that one of the participants in a bar fight, to which they had previously responded, was a police officer; (2) failing to report to IAB that the perpetrator of an alleged assault was released because he was a police officer, and (3) utilizing a Department computer to obtain confidential information about a personal acquaintance. The behavior evidenced by Respondent's prior disciplinary matters are not so dissimilar as to be irrelevant in fashioning an appropriate penalty in this matter. Rather, I find that both disciplinary matters evidence a willingness to disregard information relevant to a police investigation.

Accordingly, in connection with the charged misconduct, I recommend that the aggravated penalty of the forfeiture of thirty (30) vacation days be imposed.

Respectfully submitted,

Josh Kleiman
Josh Kleiman

Assistant Deputy Commissioner Trials

APPROVED

[Signature]
JUL 19 2021
DERMOT SHEA
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER STELLA IBANEZ
TAX REGISTRY NO. 931943
DISCIPLINARY CASE NO. 2018-19778

Respondent was appointed to the Department on July 22, 2002. On her three most recent performance evaluations, Respondent twice received 4.0 overall rating of "Highly Competent" for 2015 and 2016, and received a 3.5 overall rating of "Highly Competent/Competent" for 2014.

In 2011, Respondent forfeited 31 pre-trial suspension days and was placed on one-year dismissal probation for misconduct that was the subject of two disciplinary cases. In the first matter, Respondent was found Guilty of participating in a meeting with a group of officers wherein it was proposed that the officers deny knowledge that one of the participants in a bar fight, to which they had previously responded, was a police officer. Respondent admitted that she tacitly agreed by nodding, even though none of the officers followed through with the agreement. Respondent was also found Guilty of failing to report to IAB that perpetrator of an alleged assault was released because he was a police officer. In the second matter, Respondent pleaded Guilty to utilizing a Department computer to obtain confidential information about a personal acquaintance.

Respondent was placed on Level II Discipline Monitoring from September 9, 2015, to March 8, 2017. In connection with this instant matter, Respondent was placed on Level I Discipline Monitoring on July 12, 2019; that monitoring remains ongoing.

For your consideration.

Josh Kleiman
Josh Kleiman

Assistant Deputy Commissioner Trials